

U.S. Patent Application Serial No. 10/519,832

Response filed June 23, 2009

Reply to OA dated March 24, 2009

REMARKS:

Claims 6, 8, and 10 are currently being examined. No claims have been amended herein.

The Examiner has rejected claims 6, 8, and 10 under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,494,055 (Meserole '055) in view of U.S. Patent No. 6,234,351 (Wilcox '351).

Applicants respectfully traverse this rejection, for the following reasons.

Meserole '055 and **Wilcox '351**, alone or in combination, fail to describe, teach, or suggest the combination of features as set forth in claim 6 including the following features: "a combined passage member detachably attached to the cooling cylinder and disconnectably connected to the mixture supply passage and the air supply passage, wherein the mixture supply passage is combined with the air supply passage, and thereafter connected to the inside of the cooling cylinder by the combined passage member, and the combined passage member is disposed in the cold storage," in combination with the other claimed features.

In **Meserole '055**, a bag 44 does not have bag main body containing a liquid and an outer layer member capable of forming a sealed space between the outer layer member and the bag main body.

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The Examiner has acknowledged that **Meserole '055** does not disclose that the bag includes an inner layer and an outer layer with the compression device supplying the compressed air between the layers (Office Action dated March 24, 2009, page 2, paragraph 2).

In order to try to remedy the acknowledged deficiencies of **Meserole '055**, the Examiner has cited and relied on **Wilcox '351**. **Wilcox '351** discloses a multiple-ply bag 10 that is formed with an air input port 14 and an air input conduit 15 that allow air 6 from a source of pressurized air 2 to enter an inflatable air chamber formed in an interply region 204, 205 of the bag 10.

The Examiner has acknowledged that the air injection point 35 of **Meserole '055** is located outside the refrigerated mix cabinet 40 (Figure 4). The Examiner has suggested that the air injection point 35 corresponds to the "combined passage member" as set forth in claim 6 of the subject application (lines 11-15). Claim 6 of the subject application sets forth a combined passage member which is located inside a cold storage.

The Examiner has improperly suggested that the location of the air injection point 35 is merely a matter of design choice. In particular, the Examiner has improperly suggested that "The location of the combined passage member 35 [air injection point 35] of **Meserole '055** is considered to be a matter of obvious choice to one of ordinary skill in the art" (Office Action dated March 24,

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2009, page 2).

The Examiner has improperly suggested that the location of the combined passage member (as set forth in claim 6 of the subject application) is merely a matter of design choice. The Examiner has improperly suggested that "The location of the combined passage member being disposed in the cold storage is considered to be a mere matter of obvious choice to one of ordinary skill in the art." (Office Action dated March 24, 2009, page 3, lines 2-6). Applicants respectfully disagree with the Examiner's suggestions.

1. Location of combined passage member as set forth in claim 6 of the subject application is not a mere matter of obvious choice to one of ordinary skill in the art.

In the Office Action dated March 24, 2009, the Examiner appears to be improperly relying on *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). In *In re Japikse*, claims to a hydraulic power press switch which read on the prior art except with regard to the position of the starting switch were held to be unpatentable because shifting the position of the starting switch would not have modified the operation of the device. Thus, when a change in location of a claimed element does not modify the operation of a device, such a change in location can be held to be an obvious matter of design choice.

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The facts of *In re Japikse* are very different from the facts at issue regarding **Meserole '055** and claim 6 of the subject application.

Moving the air injection point 35 of **Meserole '055** into the refrigerated mix cabinet 40 would modify the operation of the device. Accordingly, in view of the above, the facts at issue regarding **Meserole '055** and claim 6 of the subject application are very different from the facts of *In re Japikse*.

The location of the combined passage member as set forth in claim 6 of the subject application is not a mere matter of obvious choice to one of ordinary skill in the art.

In **Meserole '055**, the mix travels out of the refrigerated mix cabinet 40, and then travels through the piping 46. The mix arrives at the air injection point 35 after traveling through the piping 46. The temperature of the mix will increase before arriving at the air injection point 35, because the air injection point 35 is not inside the refrigerated mix cabinet 40. Because the air injection point 35 is outside the refrigerated mix cabinet 40, this means that the air is warmer than the temperature of the refrigerated mix cabinet 40, and this also means that the mix is warmer than it was when it was inside the refrigerated mix cabinet 40.

Changing the location of the air injection point 35 to a new location inside the refrigerated

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mix cabinet 40 would modify the operation of the **Meserole '055** device. If the air injection point were located inside the refrigerated mix cabinet 40, the mix and the air would be at colder temperatures when they were combined, and thus the mix and the air would combine in a different manner.

Accordingly, in view of the above, the location of the air injection point 35 is not merely a matter of obvious choice.

The Examiner must provide a motivation or reason for a worker in the art to make such a modification to the **Meserole '055** device, for the following reason: the Examiner's new location for the air injection point 35 inside the refrigerated mix cabinet 40 would modify the operation of the **Meserole '055** device.

The Examiner has not demonstrated how the cited art could provide a motivation or reason for a worker in the art to change the location of the air injection point 35 of **Meserole '055** from outside the refrigerated mix cabinet 40 to inside the refrigerated mix cabinet 40.

The Examiner has not demonstrated how the cited art could describe, teach, or suggest the combination of features as set forth in claim 6 including the features relating to the location of the combined passage member inside the cold storage, in combination with the other claimed features.

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A mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness.

"Rejections on obviousness cannot be sustained by mere conclusory statements." *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 127 S.Ct. 1727, 82 USPQ2d 1385.

The Board of Patent Appeals and Interferences has stated that: "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes to the reference device." *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

Meserole '055 and **Wilcox '351**, alone or in combination, fail to describe, teach, or suggest the combination of features as set forth in **claim 6** including the following features: "a combined passage member detachably attached to the cooling cylinder and disconnectably connected to the mixture supply passage and the air supply passage, wherein the mixture supply passage is combined with the air supply passage, and thereafter connected to the inside of the cooling cylinder by the combined passage member, and the combined passage member is disposed in the cold storage," in combination with the other claimed features.

Accordingly, in view of the above, Applicants respectfully submit that this rejection of claim 6 is improper and should be withdrawn. It is submitted that this rejection of claims 8 and 10 should be withdrawn by virtue of their dependency.

2. Location of the combined passage member in the cold storage is critical and causes greater than expected results. Also, the results are of a significant, practical advantage.

The Examiner has improperly asserted that the location of the air injection point 35 is merely a matter of design choice. In particular, the Examiner has improperly asserted that “The location of the combined passage member 35 [air injection point 35] of **Meserole '055** is considered to be a matter of obvious choice to one of ordinary skill in the art” (Office Action dated March 24, 2009, page 2).

The Examiner has improperly asserted that the location of the combined passage member (as set forth in claim 6 of the subject application) is merely a matter of design choice. The Examiner has improperly asserted that “The location of the combined passage member being disposed in the cold storage is considered to be a mere matter of obvious choice to one of ordinary skill in the art.” (Office Action dated March 24, 2009, page 3, lines 2-6).

Applicants respectfully disagree with the Examiner's assertions.

The location of the combined passage member in the cold storage is critical and causes greater than expected results. Also, the results are of a significant, practical advantage.

The location of the combined passage member in the cold storage is not merely a matter of obvious choice to one of ordinary skill in the art.

The following information is in accordance with the principles set forth by the disclosure of the subject application:

- a. The mixed raw material bag 5, the mixed raw material tube 34, the other end portion of the air circuit 51, one end portion of the bag pressurizing pipe 7, and the Y-type mixing unit 57 are positioned in the storage inside 2A of the cold storage 2, and kept cold. "Therefore, the temperature of the mixture does not rise in the process of flowing through the mixed raw material tube 34" (specification, page 14, lines 7-14).
- b. "The mixed raw material tube 34, Y-type mixing unit 57, check valves 54, 56 and the like are easily cleaned by disconnectable connection" (specification, page 15, lines 18-20).
- c. "The mixture pushed out into the mixed raw material tube 34 flows into the cooling cylinder 8 from the mixture inlet 9 via the check valve 54 and the Y-type mixing unit 57. At this

time, since the air circuit 51 including the check valve 56 is removed, the air in the cooling cylinder 8 goes out of the other outlet of the Y-type mixing unit 57. Accordingly, the mixture also smoothly flows into the cooling cylinder 8" (specification, page 20, lines 2-9).

- d. "After the mixed raw material tube 34 is combined with the air circuit 51 in the Y-type mixing unit 57 as described above, the mixture inlet 9 communicates with the inside of the cooling cylinder 8. Therefore, the mixture can be supplied into the cooling cylinder 8, and air for the overrun can be supplied via the single mixture inlet 9, and the structure of the cooling cylinder 8 is simplified" (specification, page 25, lines 2-9).
- e. "Since the mixture raw material tube 68 in the storage inside 2A, the other end portion of the air circuit 51, and parts (surrounded with a two-dot chain line in FIG. 2) including the Y-type mixing unit 57 are also kept cold, the temperature of the mixture or the compressed air flowing into the cooling cylinder 8 does not rise in the process of passage" (specification, page 26, lines 11-17).

Meserole '055 and **Wilcox '351**, alone or in combination, fail to describe, teach, or suggest the combination of features as set forth in claim 6 including the following features: "a combined passage member detachably attached to the cooling cylinder and disconnectably connected to the mixture supply passage and the air supply passage, wherein the mixture supply passage is combined

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with the air supply passage, and thereafter connected to the inside of the cooling cylinder by the combined passage member, and the combined passage member is disposed in the cold storage," in combination with the other claimed features.

Accordingly, in view of the above, Applicants respectfully submit that this rejection of claim 6 is improper and should be withdrawn. It is submitted that this rejection of claims 8 and 10 should be withdrawn by virtue of their dependency.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the Applicants' undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

KRATZ, QUINTOS & HANSON, LLP



Darren Crew
Attorney for Applicants
Reg. No. 37,806

DC/llf

Atty. Docket No. **040625**
Suite 400
1420 K Street, N.W.
Washington, D.C. 20005
(202) 659-2930



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